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November 22, 2010

RECEIVED  
TCEQ  
WATER SUPPLY DIV.  
2010 NOV 23 PM 3:08

*via facsimile transmission  
and deposit in the U.S. mail*

Ms. LaDonna Castañuela  
Office of the Chief Clerk  
Texas Commission on Environmental Quality  
PO Box 13087, MC-105  
Austin, Texas 78711-3087  
(512) 239-3311 (FAX)

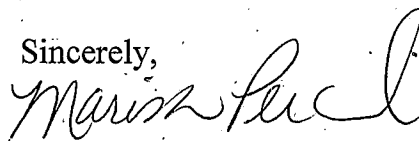
**Re: In the Matter of the Application of Genan, Inc. for Scrap Tire Storage  
Facility Registration No. 6200673**

Dear Ms. Castañuela:

Please find enclosed for filing, Citizens for Responsible Recycling's Motion for Rehearing and/or Motion to Overturn regarding issuance of Scrap Tire Storage Facility Registration No. 6200673 to Genan, Inc. An original and seven copies have also been deposited in the U.S. mail for filing.

Thank you for your attention to this matter.

Sincerely,



Marisa Perales

Enclosure

cc: Service List

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2010 DEC -1 AM 10:33  
CHIEF CLERKS OFFICE

IN THE MATTER OF THE  
APPLICATION OF GENAN, INC. FOR  
SCRAP TIRE STORAGE FACILITY  
REGISTRATION NO. 6200673

§  
§  
§  
§

2010 DEC -1 AM 10:33  
BEFORE THE  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
OFFICE  
WATER  
11.3.08

**MOTION FOR REHEARING AND/OR MOTION TO OVERTURN REGARDING  
ISSUANCE OF SCRAP TIRE STORAGE FACILITY REGISTRATION NO.  
6200673 TO GENAN, INC.**

TO THE HONORABLE TCEQ COMMISSIONERS:

Citizens for Responsible Recycling ("Movant" or "CRR") is an association comprised of members who are aggrieved by the Executive Director's October 28, 2010 decision to issue Tire Registration No. 6200673 to Genan, Inc. for a scrap tire storage facility. Accordingly, Movant files this Motion for Rehearing and/or Motion to Overturn, and in support thereof, respectfully shows the following:

**I. INTRODUCTION**

CRR is an affected person under applicable TCEQ rules because at least one member would otherwise have standing to request a hearing in his own right, the interests CRR seeks to protect are germane to the organization's purpose, and neither the claims asserted nor the relief requested requires the participation of individual members. At least one member of Citizens for Responsible Recycling lives within 5 miles of the facility and is concerned about the impact the facility will have on his health and safety and the use of his property. Therefore, a reasonable relationship exists between Movant's interests and the regulated activity.

The Executive Director's decision to issue a tire registration to Genan, Inc. (hereinafter, "Applicant" or "Genan") includes errors of fact and law. The Executive

Director (hereinafter "ED") erred by issuing a registration based on an application that was deficient in a number of respects. Moreover, the ED erred by issuing the registration without first providing proper notice of the application. The Applicant failed to comply with all notice requirements.

In short, the Applicant: failed to provide the required information regarding the proposed site and surrounding area; did not comply with the TCEQ's technical requirements; provided an inadequate Site Operating Plan; and failed to include information required by 30 TAC § 328.63. And the ED's decision to issue Genan a permit was made through unlawful procedure, arbitrary and capricious and characterized by an abuse of discretion.

## **II. FAILURE TO COMPLY WITH NOTICE REQUIREMENTS**

Genan originally submitted an application in late 2009 that was incomplete and lacked vital pieces of information.<sup>1</sup> Genan first published notice of its application in late November and early December 2009 (November 19, 26, and December 3, 2009) in the North Channel Sentinel. But this notice did not comply with TCEQ's notice requirements, and so, Genan published notice several months later in the Houston Chronicle (February 14, 21, and 28, 2010).

TCEQ ultimately acknowledged that Genan's original application was "incomplete" by letter dated February 26, 2010, and returned the application "to allow

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<sup>1</sup> For instance, one of TCEQ's comments in its notice of deficiency was that Genan had not provided a landownership map demonstrating the location of affected owners within 500 feet of the boundary of the site that had been certified by a professional engineer—one of the most basic application requirements.

the applicant [an] opportunity to submit an application that *is complete*.” (Emphasis added.) In an attempt to correct the errors in its deficient application, Genan made significant changes and submitted a revised application with significant additional information. But it submitted this revised application *after* it had already published notice in the Houston Chronicle.

In other words, TCEQ returned Genan’s application *two days before* the final publication of notice on February 28. So, TCEQ no longer even had Genan’s application on file by the date of the final published notice, and the last statement in the published notice, advising individuals to contact TCEQ’s Regional Office for specific information about the proposed project, was no longer accurate at the time of this last publication. This means the public was not given an opportunity to review the completed – though still inadequate – application. Therefore, Genan should have provided notice to the general public to alert them that a revised application was available for public viewing.

When Genan finally responded to the deficiencies noted in TCEQ’s letter, it did so by submitting a “revised original application.” This revised original application was received by TCEQ’s Regional Office on August 9, 2010—over five months after Genan’s last published notice.

In short, the application that was initially submitted by Genan was so lacking in basic information that it cannot be said to have constituted a complete application, with all of the information that the public is entitled to review. And the application that is now on file with the TCEQ is a substantially different application than the one that was initially noticed. Since Genan submitted a “revised original application,” it should have

provided notice to the public, so that the public had an opportunity to review all of the information and determine if and how they may be affected. The initial notice was simply not adequate and failed to accomplish its objective.

### **III. INADEQUATE INFORMATION REGARDING PROPOSED SITE AND SURROUNDING AREA; FAILURE TO COMPLY WITH MAP REQUIREMENTS**

TCEQ's rules require the inclusion of location maps in the application. These maps shall be all or a portion of county maps prepared by the Texas Department of Transportation ("TxDOT"). In addition, at least one general location map shall be at a scale of one-half inch equals one mile. The single general location map included with the above-referenced application does not appear to comply with these requirements. The map does not reference TxDOT as its source. It does not include a scale of one-half inch equals one mile. It also does not seem to include a North arrow. It is not clear if this map is the latest map available, as there is no date provided. The map simply lacks basic information required by TCEQ rules. The Harris County Right-of-Way map also fails to comply with the above-described requirements.

Similarly, the topographic map does not clearly represent all roads within one mile of the site. The map does not appear to include a north arrow. In fact, the map does not even clearly show that it is a USGS map.

The landowners map does not clearly reflect the proposed site; nor does it clearly reflect that a 500-foot radius has been drawn around that site. In fact, this map appears to be outdated, as the affidavit of property ownership identifies a Genan official as the owner of the proposed facility site, but this is not reflected in the landowners map or the

landownership list. Also, not every piece of property within the 500-foot radius appears on the landownership list. For instance, the tract numbered "22" is not listed on the landownership list.

Additionally, it appears likely that the "NE HC MUD 1" that is indicated on Genan's property ownership map refers to Northeast Harris County MUD 1, but this is not clearly reflected on the map. This MUD should have been provided proper notice.

None of the maps reflect that a residential structure sits on the proposed site, even though this demarcation is required by the rules. Also, TCEQ rules require the property ownership affidavit to include a legal description of the site. However, no legal description was attached to the affidavit.

#### **IV. NONCOMPLIANCE WITH REQUIREMENTS REGARDING TECHNICAL INFORMATION**

The application's Site Layout Plan must include the location of the facility's buildings and the location and description of processing equipment. But the Site Layout Plan included with the application did not clearly show the location of the gatehouse or of the shredder that will be employed. The Site Layout Plan drawing did not clearly mark the locations of the personnel assembly points and evacuation routes. And there was no information about insurance held by the company. The document included in the application as Attachment 27 states that it confirms only existence of coverage in Denmark.

In addition, the application must include a drainage plan, with calculations demonstrating that normal drainage patterns will not be significantly altered. Notably,

Genan failed to satisfy this regulation. In fact, it appears that the drainage plan was removed from the application altogether. So, there are no calculations included in the application showing how normal drainage patterns will not be significantly altered.

And previous calculations provided in the original application reflect that normal drainage patterns would indeed be significantly altered.

It is also unclear how the proposed detention pond will be used as a storage pond for one-million gallons of firewater and still have adequate capacity for runoff from the entire site. It is also not clear how all of the runoff will be directed to this detention pond. Upon request by the undersigned counsel, Genan provided a copy of a "detention pond study," but it does not appear that this "Study" was included with the application. The stamp on the first page indicates that TCEQ's Regional Office received it October 14, 2010—three months after the revised original application was submitted. Furthermore, this Study appears to be missing several pieces of information. For instance, it references Exhibits 3, 4, 5, and 6, and yet, there are no such exhibits attached to the copy of the Study that was provided.

In addition, even with the scant information that is included in this Study, one can readily observe that normal drainage patterns will be significantly altered. The peak flow rates, for instance, increase from 41.94 cfs under 10-year pre-development conditions to 124.82 cfs under 10-year post-development conditions. Similarly, peak flow rates increase from 69.20 cfs under 100-year pre-development conditions to 187.49 cfs under 100-year post-development conditions. These figures indicate a significant alteration in peak flow rates as a result of the proposed project. There is no information included in

the application that addresses this increase in volume. (In fact, it appears that this information—regarding drainage patterns—was never even provided to TCEQ staff with the revised application.)

Finally, it is unclear which engineer is responsible for the drainage/detention pond plan. The Study's front page indicates that it was prepared in October 2009 and sealed October 19, 2009 by Michael Baldwin, P.E. But the Study was revised in February 2010. It is not clear what those revisions consisted of. More importantly, it is not clear whether a professional engineer prepared those revisions and sealed them. Many of the older pieces of information submitted with the initial application are sealed by Mr. Baldwin and dated 2009, but newer pieces of information have been sealed by Mr. Gary P. Olson, P.E. Thus, it is not clear that the detention pond study—including its recent revisions—has been properly sealed by a professional engineer responsible for preparing the study.

Indeed, because the revised application includes seals by more than one engineer, it should be clarified which of the engineers is responsible for the application. It is not even clear whether both engineers remain employed by, and continue to represent, Genan. Thus, Genan should designate one engineer—presumably, Mr. Olson, the engineer who sealed the more recent documents—as the person responsible for reviewing all of the information in the application and sponsoring that information.

The Fire Plan is also inadequate. The Fire Plan in the application does not include roles to be assumed by on-site personnel, the locations of duty stations, and lacks any information about procedures to be followed in case of fire. For instance, the map



showing the locations of the various emergency responders does not include the best route, or any route, for the responders to use to arrive at the proposed site.

The cost estimate for closure is also inadequate and warrants further investigation.

Genan's Site Operating Plan is also too general. Its vector control plan is inadequate. Genan should have demonstrated approval of its plan by the Harris County Mosquito Authority.

Moreover, several state and local permits and approvals are still missing from the application. Genan should have been required to obtain these approvals before the ED issued the Registration. The rules clearly contemplate that all applicable federal, state, and local permits and registrations should be obtained before the application is submitted, and those permits should be included in the application, along with the associated permit numbers. *See* 30 Tex. Admin. Code § 328.63(c)(4)(G).


#### **V. THE APPLICATION FAILS TO INCLUDE INFORMATION REQUIRED BY RULE 328.63**

The application fails to include much of the information required by applications for processing facilities. For instance, the information about the end use market for the processed product is very general and amounts to nothing more than an advertising brochure. And the shredder layout drawing lacks basic information. Almost no useful information can be gleaned from the drawing included as Attachment 9. The map does not even indicate which direction is north.

## VI. CONCLUSION & PRAYER

For the reasons set forth above, it was improper for the ED to issue Scrap Tire Storage Facility Registration No. 6200673 to Genan, Inc. because the Applicant failed to comply with a number of TCEQ's regulatory requirements. The Commission should therefore overturn the ED's decision. Genan should be required to submit a new, complete application, with all of the required information, and provide new notice, advising the public of the new application submittal.

Respectfully Submitted,

By:   
Marisa Perales

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## CERTIFICATE OF SERVICE

By my signature, above, I hereby certify that on November 22, 2010, the forgoing document was filed with the Chief Clerk of the TCEQ via facsimile transmission. The original and seven copies were also filed with the Chief Clerk via deposit in the United States Mail. True and correct copies were served upon all parties listed below via hand delivery, facsimile transmission, email, or by deposit in the United States Mail.

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